

Chapter 280. SMOKING, OUTDOOR

[**HISTORY:** *Editor's Note: Former Ch. 280, Smoking, adopted 3-7-1990 by Ord. No. 90-3, was repealed 9-3-2003 by Ord. No. 2003-15. Adopted by the Common Council of the City of Ithaca 4-7-2010 by Ord. No. 2010-02. Amendments noted where applicable.*]

GENERAL REFERENCES

Assemblies and parades — See Ch. **132**.
Commons — See Ch. **157**.
Six Mile Creek Gorge — See Ch. **320**, Art. I.
Zoning — See Ch. **325**.
Parks and recreation — See Ch. **336**.
Vehicles and traffic — See Ch. **346**.

§ 280-1. Purpose.

The primary purpose of this chapter is to reduce the proximate exposure of the public, especially children, to the hazards and annoyance of second-hand tobacco smoke. Furthermore, this legislation is intended to reduce litter and possible contamination from discarded cigarette butts in public places and to reduce the likelihood that young persons will initiate tobacco use (by reducing the incidence of public smoking in places where young persons are likely to be present).

§ 280-2. Legislative authority.

- A. Pursuant to the New York State Constitution, the Common Council of the City of Ithaca may adopt and amend laws pertaining to the protection, conduct, safety, health and well-being of the persons and property in the City. Similarly, the Charter of the City of Ithaca provides that the Common Council may enact and enforce any ordinance (not repugnant to the constitution or laws of the state) for any local purpose (except fluoridation of the water supply) pertaining to the preservation of order, peace and health, and the safety and welfare of the City and the inhabitants thereof.
- B. The Clean Indoor Air Act adopted by the New York State Legislature (Public Health Law, Article 13-E, § 1399-n et seq.) addresses indoor smoking only and, in any case, specifically provides that "nothing herein shall be construed to restrict the right of any county, city, town, or village to adopt and enforce additional local law, ordinances or regulations which comply with at least the minimum applicable standards set forth in this article."

§ 280-3. Definitions.

For the purposes of this chapter, the following terms shall have the following definitions:

CHILD-CARE CENTER

A facility where care and supervision are provided for children in exchange for consideration. For the purposes of this chapter, a "child-care center" refers only to such a facility that is licensed by New York State or Tompkins County to operate as such.

CHILDREN

Persons under the age of 18 years.

CITY-OWNED BUILDING

Any structure owned by the City of Ithaca, except for any such structure that is subject to a written lease to another party, provided such lease was entered into prior to the effective date of this chapter and provided such lease does not give the City the authority to regulate outdoor smoking on the leased premises.

ENTRANCE

The means by which persons may enter a building, typically consisting of a door or doorway, which may be associated with a stoop or steps and/or a ramp. For the purposes of this chapter, "entrance" includes the stoop, steps or ramp leading from the sidewalk or pavement to such a door or doorway.

EXIT

The means by which persons may leave a building, typically consisting of a door or doorway, which may be associated with a stoop or steps and/or a ramp. For the purposes of this chapter, "exit" includes the stoop, steps or ramp leading from the sidewalk or pavement to such a door or doorway.

FACILITY

The structures and activity areas (which may be partially enclosed or unenclosed) associated with an operation (which operation may be governmental, recreational, educational, commercial or of another type).

MASS TRANSIT SHELTER

A structure that is enclosed on at least three sides and has a roof, intended for use by persons waiting for a bus or other mass transit vehicle.

MOBILE VENDING

An activity consisting of the offering of goods and/or services for sale from a nonpermanent base of operations, including but not necessarily limited to a cart, kiosk, table or vehicle.

OUTDOOR DINING

An activity consisting of the provision of facilities that are available to members of the public (with or without payment) for eating and/or drinking in an area that is not fully enclosed by a permanent structure (walls, roof, etc.).

OUTDOOR RECREATION AREA

An area that is not fully enclosed and that is designated for recreational purposes or activities.

PAVILION

A structure that is at least partially unenclosed (for example, with open sides) and that is intended for public use.

PERMIT

Written permission for an activity proposed to be conducted on property of the City of Ithaca (including any conditions placed upon such permission), issued and signed by the appropriate regulatory authority of the City.

PLAYGROUND

An outdoor recreation area that is designed and intended for use by children. For the purposes of this chapter, a playground that is fenced or otherwise physically demarcated shall be deemed to include all of the area inside such

fence or demarcation; a playground that is not fenced or otherwise demarcated shall be deemed to include all open space that is associated with or adjacent to it.

PLAYING FIELD

That portion of an outdoor recreation area that is set up and marked in some way for the playing of one or more specific games (such as baseball, football or soccer). For the purposes of this chapter, a playing field that is fenced or the outside perimeter of which is otherwise physically demarcated shall be deemed to include all of the area inside such fence or demarcation, together with any bleachers or other, designated viewing area; a playing field that is not fenced or otherwise demarcated (as to its outside perimeter) shall be deemed to include all of the area customarily required for playing the game for which it is being used, together with any bleachers or other designated viewing area.

SCHOOL

The facility where an educational institution licensed by New York State and serving students in any grade from kindergarten through 12th grade is located.

SMOKE

The emission produced by the burning of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco.

SMOKING

The burning of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco.

§ 280-4. Outdoor smoking prohibited in certain public places.

Smoking shall not be permitted and no person shall smoke in the following outdoor areas, subject to the limited exception for streets open to regular traffic as set forth in § 280-5, below:

- A. At or near playgrounds, child-care centers and schools, as follows:
 - (1) At any playground that is open to use by the public or on any public property that is within 25 feet of such a playground.
 - (2) On any public property that is within 25 feet of any entrance, exit, window or ventilation intake of any licensed child-care center or its facility.
 - (3) On any public property that is within 25 feet of any entrance, exit, window or ventilation intake for a school, school building or school facility.
 - (4) The owner of any such playground, child-care center or school shall be required to post and maintain signage acceptable to the City advising the public of the above restrictions.
- B. In other areas or at events where persons cannot readily escape nearby second-hand smoke, as follows:
 - (1) Within any outdoor dining area (whether covered or not) located on City-owned property, including the Ithaca Commons, as follows:
 - (a) Within any seating area for outdoor dining and/or drinking associated with a bar or restaurant that is on City property and subject to a City license and that is in use for that purpose; and
 - (b) Within any seating area for outdoor dining and/or drinking, established or maintained by the City or its agent, that is in use for that purpose.
 - (2) On any public property that is within 25 feet of the area occupied by a mobile vending cart or other mobile vendor operating on City-owned (or City-leased) property.
 - (3) At outdoor events on City-owned property, as follows:

- (a) Within the outdoor seating and viewing areas for open-air concerts, dances, parades, other performances, lectures, motion-picture or video presentations or similar open-air presentations for which a permit from the City is required and when in use for that purpose.
- (b) Within the outdoor seating and viewing areas associated with unenclosed (or partially enclosed) sports areas or similar open-air recreational facilities.
- (c) During outdoor festivals, block parties and similar events on public property, for which a permit from the City is required, that will involve the concentration of persons in small or constrained spaces. For such an event, smoking is prohibited within the area covered by the City permit, except within a designated smoking area as described in Subsection **B(3)(d)**, below.
- (d) If the sponsor of an outdoor event (per Subsection **B(3)(a)**, **(b)** or **(c)** above) wishes to allow smoking at the event, the sponsor must propose and request (from the permit issuer) a designated smoking area associated with the event (which must be so marked, may not be in a permanently smoke-free area and would result in little or no direct exposure of nonsmokers to second-hand smoke); if no such exception is requested and granted, the event must be entirely smoke free. For an event occupying a portion of the Ithaca Commons, the designated smoking area shall be that part of the Commons where outdoor smoking is not otherwise prohibited. (See Subsection **C(1)**, below.)
- (4) Any licensee or permit holder for an outdoor dining area, vending or outdoor event on City-owned property shall be required to inform members of the public of applicable restrictions on outdoor smoking (for example, through signs posted on a mobile vending cart, at the perimeter of an outdoor dining area or outdoor event and/or in the publicity for an event).

C. In certain other areas, as follows:

- (1) On any part of the Ithaca Commons, and within the alleys to the south of it, as follows:

[Amended 10-6-2010 by Ord. No. 2010-07]

- (a) For the purpose of this section, the Ithaca Commons consists of the entirety of the public right-of-way of the 100 block of North Tioga Street lying to the south of the southerly curblineline of East Seneca Street, and the entirety of the public right-of-way of the 100 and 200 blocks of East State/Martin Luther King Street lying between the easterly curblineline of Cayuga Street, and the westerly curblineline of Aurora Street;
- (b) Smoking is also prohibited within the so-called "Home Dairy Alley" (running south from the Commons) and its southerly extension beneath the Green Street Parking Garage (to the northerly curblineline of East Green Street), and within that part of the City-owned portion of the alley between the Green Street Parking Garage and the property to the north commonly referred to as "Center Ithaca" that is west of the easterly stairway located in said alley.

- (2) Public sidewalk.

[Added 6-1-2011 by Ord. No. 2011-03 *Editor's Note: This ordinance also redesignated former Subsection C(2) through (8) as Subsection C(3) through (9), respectively.*]

- (a) On the public sidewalk along both sides of certain streets immediately adjacent to the Ithaca Commons, namely:

- [1] The 100 block of North Cayuga Street;
- [2] The 100 block of South Cayuga Street; and
- [3] The 100 block of West State/Martin Luther King, Jr., Street.

- (b) For the purpose of this section, "public sidewalk" means that area between the outside of the curb and the property line of the adjacent, privately owned property that fronts on said sidewalk.

- (3) Outside City-owned buildings, as follows: at all times, on any public property within 25 feet of any entrance or exit or window or ventilation intake for any building owned by the City of Ithaca.

- (4) In City-owned parks, as follows: Within certain City-owned parks or areas of certain City-owned parks, as follows:

(a) In Stewart and Cass Parks, as follows: Smoking is prohibited in designated, smoke-free areas (See below and maps dated April 7, 2010, on file in the City Clerk's Office.); outdoor smoking is otherwise permitted in these parks, except that the managers of City-operated programs in these parks shall have authority to designate (with appropriate signage) additional smoke-free areas when in use for those programs, when such designation is reasonably necessary for the protection of public health.

[1] Cass Park smoke-free areas (in addition to playground areas) are:

- [a] All playing fields, when in active use for recreational purposes, and within 25 feet of the boundary of a playing field, when the field is in use for such purpose;
- [b] Inside any pavilion or within 25 feet of it;
- [c] Inside the skating rink structure or within 25 feet of it;
- [d] Within the fenced area around the swimming pool; and
- [e] The tennis courts, when in active use for recreational purposes.

[2] Stewart Park smoke-free areas are:

- [a] The playground/pavilion area, namely, the area bordered by the inner park roads, plus the large pavilion and a twenty-five-foot buffer around it (includes carousel and sprinkler area; runs to lake shore);
 - [b] The tennis courts, when in active use for recreational purposes; and
 - [c] Inside the boathouse and within 25 feet of any entrance, exit, window or ventilation intake.
- (b) Anywhere within any other City-owned or operated park (including DeWitt Park), except that this prohibition shall not apply to the City-owned festival lands/off-leash area currently operated as part of Allan H. Treman State Park.

(5) On the following City-owned trails and special, multipurpose walkways:

- (a) Cayuga Waterfront Trail.
- (b) Six Mile Creek Creekwalk.
- (c) Inlet Island Promenade.

(6) In City-owned natural areas, as follows: no smoking within the following designated (or otherwise specified) natural areas, both within and outside the boundaries of the City of Ithaca:

- (a) Six Mile Creek.
- (b) Fuertes Sanctuary.
- (c) Ithaca Falls.
- (d) Southwest Substitute Parkland (pending designation as "natural area").

(7) At other City-operated facilities, as follows: no smoking in the following places:

- (a) Elevators in City parking garages.
- (b) Within the fenced area of the Alex Haley Pool or within the fenced area of the adjacent Melvyn Bell Memorial Basketball Court, when in use for recreational purposes.

(8) Inside, or on any public property within 25 feet of, any mass transit shelter.

(9) At facilities leased or licensed to others, as follows:

- (a) Whenever the City is negotiating a new or renewed lease or license for use of City land or buildings, the City shall include in such lease or license a provision that will apply outdoor smoking rules comparable to those for other, comparable City property (as set forth herein).
- (b) As for existing leases, where this chapter would not apply automatically, the City shall ask such lessees to agree (voluntarily) to operate the outdoor areas of the leased premises in a manner that is consistent with City regulation of smoking in comparable outdoor areas.

§ 280-5. Exception for streets open to regular traffic.

Streets open to regular vehicular traffic are exempt from the prohibitions on outdoor smoking emanating from an adjacent area, except that such prohibition shall extend into the parking

lane of such a street and to persons in or on a vehicle in an affected parking area on public property (such as near a school or playground).

§ 280-6. Referenced maps are approximations

All maps referenced in this chapter are visual approximations of legislative intent as expressed in the language of this chapter.

§ 280-7. Penalties for offenses.

Any person who violates any provision of this chapter by smoking in an area where outdoor smoking is hereby prohibited shall be guilty of an offense punishable by the following penalties:

- A. First offense: \$75.
- B. Second offense: \$150.
- C. Third or subsequent offense: \$250.

§ 280-8. Effective date.

This chapter shall take effect on August 1, 2010, upon publication of notice as provided in the Ithaca City Charter.